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DIWAN SUGAR MILLS AND ORS.

v.

STATE OF U.P. AND ORS.

MAY 3, 2000

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[B.N. KIRPAL AND SYED SHAH MOHAMMED QUADRI, JJ.]

U.P. Sugar Undertakings (Acquisition) Act, 1971 :

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S. 7—Sugar factory—Taken over by State Government—Compensation for—Distribution of amongst interested persons after deduction towards liabilities—Sugar factory owned by a partnership firm—Leased out to another company—Owners filing a claim before Prescribed Authority for Compensation contending that the amount payable in respect of acquisition of the properties and assets should be paid without deducting any liabilities of the lessee—Contention rejected by Prescribed Authority as also by Tribunal—Held, s. 7 requires types of compensation payable under sub-sections (1) to (5) being first utilised for discharging liabilities under sub-section (6) and thereafter if any amount remains that is to be deposited with the Prescribed Authority for distribution amongst interested persons.

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East India Coal Company Limited v. East Bulliaree/Kendwadih Colliery Co. (P) Limited and others, [1987] 2 SCC 124, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4872 of 1989.

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From the Judgment and Order dated 7.7.84 of the U.P. Sugar Undertakings (Acquisition) Advt. 1971, 26/16, at Lucknow in Appeal No. 6 of 1983.

WITH

Writ Petition (Civil) No. 15781 of 1984

(Under Article 32 of the Constitution of India.)

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Bedri Dass Agarwala, Rajinder Sachar, Shivi Sharma, N.N. Sharma, Shobha Dikshit, A.S. Pundir, H.K. Puri, S.K. Puri, Rajesh Srivastava, Ujjwal Banerjee, Pramod Swarup, R.B. Misra, Pradeep Misra and S.K. Sabharwal for the appearing parties.

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The following Order of the Court was delivered :

The challenge in this appeal as well as in the connected writ petition is to the decision of the Tribunal constituted under the U.P. Sugar Undertakings (Acquisition) ACT, 1971 which had interpreted Section 7 of the said Act and had come to the conclusion that the claim of the appellant for payment of Rs. 12 lakhs could not be accepted.

Briefly stated, the facts are that M/s. Diwan Sugar Mills was a partnership firm which owned a sugar factory. On 1st July, 1951, this factory is stated to have been leased out to M/s. Diwan Sugar and General Mills (Pvt.) Ltd. This factory was first taken over by the Government of India under the Defence of India Rules on 4th December, 1965 and thereafter it was taken over by the U.P. Government under Section 15 of the Industrial Development & Regulation Act. Ultimately, the factory was acquired by the U.P. Government under the aforesaid Acquisition Act.

The owners, namely, the partnership firm filed a claim before the prescribed authority for payment of compensation. The case of the owners was that under sub-section (5) of Section 7 read with the Schedule to the said Act, a sum of Rs. 12 lakhs was payable in respect of the acquisition of the properties and assets and the said payment should be made without deducting any liabilities of the lessee. On the prescribed authority rejecting this contention, the owners then filed an appeal under Section 11 of the said Act before the Tribunal but without success. The appeal is by special leave from the said decision of the Tribunal.

In order to understand the controversy in issue, we may first refer to relevant provisions of the said Act. Section 2(h) defines 'scheduled undertaking' to mean an undertaking engaged in the manufacture or production of sugar and comprises of plants, machinery, workshop, etc. This scheduled undertaking vested with the U.P. State Sugar Corporation Ltd. by virtue of Section 3 of the Act which provides that such vesting and transfer shall be free from any debt, mortgage, charge or other encumbrance or lien, etc. Section 7 provides for determination and mode of payment of compensation. Sub-sections (1) to (6) of Section 7 which are relevant for our purpose read as follows :

"7. Determination and mode of payment of compensation. -
 (1)(a) Subject to the provisions of clauses (b) and (c), the State Government shall pay as compensation for any sugar stocks comprised in a scheduled undertaking their value, which shall be calcu-

A lated at the ex-factory market price prevailing immediately before the appointed day, minus basic excise duty and additional excise duty in lieu of sales tax leviable thereon.

B (b) Such sugar stocks shall be disposed of from time to time (if necessary, by arrangement with any bank which has made advances before the appointed day on the security thereof), and as and when the stocks are disposed of, so much of the said compensation as relates to the quantity disposed of shall be paid in cash by deposit with the prescribed authority in accordance with the provisions of sub-sections (6) and (9).

C (c) Out of the said compensation the amount of any advance or, as the case may be, the proportionate amount of advance, made on the security of the quantity disposed of together with interest and any other charges relating thereto payable under the terms of the advance, and storage and other incidental charges relating thereto payable to the Corporation or to any other person, shall be paid first, and the balance shall be deposited as aforesaid with the prescribed authority and be paid to the persons entitled thereto in accordance with the decisions of that authority or of the Tribunal, as the case may be, under sub-section (9) or sub-section (12) or under Section 8, Section 9 or Section 11.

D (2) The State Government shall pay as compensation for the acquisition of any stocks of molasses comprised in the scheduled undertaking their value calculated at the price prevailing immediately before the appointed day, as fixed under the Uttar Pradesh Sheera Niyantaran Adhiniyam, 1964 (U.P. Act XXIV of 1964), and the provisions of clauses (b) and (c) of sub-section (1) shall *mutatis mutandis* apply in relation to such compensation.

F (3) The State Government shall pay as compensation for the acquisition of any stocks of sugarcane comprised in the scheduled undertaking the actual cost of their purchase, as may be agreed upon between the State Government and the persons interested and failing such agreement, as may be determined by the prescribed authority.

G (4) The State Government shall pay as compensation of the acquisition of any sugar in the process of production or any bagasse

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or press-mud comprised in the scheduled undertaking its market value as may be agreed upon between the State Government and the persons interested, and failing such agreement, as may be determined by the prescribed authority.

(5) In addition to the compensation, if any, payable under sub-sections (1), (2), (3) and (4) for the acquisition of the properties and assets referred to in those sub-sections, the State Government shall pay as compensation for the acquisition of every scheduled undertaking specified in Column 2 of any of the Schedules to this Act an amount specified against it in Column 3 thereof, by depositing it with the prescribed authority in accordance with the provisions of sub-sections (6) and (9) and the same shall be paid to the persons entitled thereto in accordance with the decisions of that authority or of the Tribunal, as the case may be, under sub-section (9) or sub-section (12) or under Section 8, Section 9 or Section 11.

(6) The State Government shall provisionally deduct from the compensation referred to in sub-sections (1), (2), (3), (4) and (5) the following amounts, namely :

(a) any amount due on account of any debt, mortgage, charge or other encumbrance or lien, trust or similar obligation attached to the scheduled undertaking which by virtue of the provisions of Section 3 shall, on the appointed day, attach to the compensation in substitution for the undertaking :

(b) any amount due to any cane-growers or any cane growers' cooperative societies in respect of the price of sugarcane supplied by such cane-growers or by members of such society to the scheduled undertaking before the appointed day;

(c) any amount of wages, retaining allowance, bonus, provident fund or other payment due to persons employed as workmen (within the meaning of the U.P. Industrial Disputes Act, 1947) in connection with the scheduled undertaking immediately before the appointed day;

(d) any amount due in respect of either the employer's contribution or the employees' contribution realised by the employer or any other dues recoverable from the employer under the Employ-

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A ees' Provident Fund Act, 1952 or the Employees' State Insurance Act, 1948, in respect of persons employed in connection with the scheduled undertaking immediately before the appointed day that the employer may have failed to pay in accordance with the respective Acts;

B (e) any amount, not being an amount referred to in clause (a), claimed by the State Government to be due immediately before the appointed day from any person interested in the scheduled undertaking on account of any loan, tax or cess, or any penalty or interest due in respect of such loan, tax or cess, -

C and deposit the balance, if, any, with the prescribed authority, and where such deductions are equal to or exceed the compensation, it shall inform the prescribed authority accordingly :

D Provided that the amount provisionally deducted under clause (a), in so far it is not claimed by the State Government as due to itself, be deposited with the prescribed authority for disbursement to the persons interested according to their respective titles.

E *Explanation.* - The amounts referred to in clauses (a), (b), (c) and (d) shall be provisionally deducted on the basis of information available with the State Government in respect thereof, and it shall be open to the State Government to obtain relevant information either from the Corporation or from the Cane Commissioner, the Labour Commissioner, the Employees' Provident Fund Commissioner or the Employees' State Insurance Corporation, as the case may be."

F As already noticed in Schedule I to the Act at Sl. No. 6 it is stated that compensation of Rs. 12 lakhs is to be paid to Diwan Sugar Mills which is also described as Diwan Sugar and General Mills (Pvt.) Ltd. which is stated to be the lessee of the factory.

G Mr. Rajinder Sachar, learned senior counsel for the appellant has contended that the compensation referred to in sub-section (5) of Section 7 is payable only to the owner of the undertaking and no deduction from the said amount of Rs. 12 lakhs is required to be made under clauses (b) to (e) of sub-section (6) of Section 7. He has submitted that the amounts due which are referred to under clauses (b) to (e) are attributable or relatable only to the lessee and from the amount of compensation payable to the owner it will

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be unfair and unjust to deduct any such amount.

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Despite the fact that along with the appeal, a petition under Article 32 has been filed by one of the partners of the firm which owned the said factory, there is no challenge to the *vires* of the Act or Section 7 in particular. What we are, therefore, to see is what is the correct interpretation of the said Section 7.

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Sub-sections (1) to (4) of Section 7 talk of compensation in respect of sugar, molasses, sugarcane and sugar in process of production or any bagasse or press-mud. The manner in which compensation in respect of the sugar stocks to be calculated is indicated in clauses (a) to (c) of sub-section (1) of Section 7. Sub-section (5) provides that in addition to the compensation payable under sub-sections (1) to (4) an amount stipulated in the Scheduled will also be payable as compensation for the acquisition of the scheduled undertaking. From the amount of compensation arrived at under sub-sections (1) to (5) of Section 7, the State Government is required to deduct the amounts referred to in clauses (a) to (e) of sub-section (6). What remains after the said deductions is the sum which is required to be deposited with the prescribed authority which is then distributed or disbursed to the persons interested according to their respective titles.

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Till the stage of distribution the amount of compensation is regarded as one composite sum. From the total amount payable, the deductions under sub-section (6) are first to be made and Section 7 does not provide that compensation for the acquisition of the scheduled undertaking referred to in sub-section (5) is to be treated differently from the compensation of the stocks, etc., envisaged by sub-sections (1) to (4) of Section 7. It is from the sum total of the compensation so arrived at that deductions under sub-section (6) are to be made. It is true that the deductions referred to by clauses (b) to (e) of sub-section (6) may relate to the enterprise which was actually running the undertaking, in this case the lessee, but sub-clause (a) of sub-section (6) which refers to the amount due on account of debt, mortgage, charge or other encumbrances can conceivably relate to any such debt, mortgage, charge, etc., undertaken by the owner himself. If the proceeds of sub-sections (1) to (4) of Section 7 can be utilised, along with the compensation under sub-section (5), for paying the amount due on account of a debt or a mortgage which may have been incurred by an owner, than it is not incongruous that compensation referred to in sub-section (5) of Section 7

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A may likewise be used for discharging the amounts due under clauses (b) to
(e) of Section 7(6). In other words, the Act requires the entire compensation
payable to put in one basket from which payments to different types of
creditors under sub-section (6) have to be made and thereafter the balance,
if any, which remains is the only amount which is required to be deposited
B with the prescribed authority for disbursement to the persons interested
therein.

Learned senior counsel for the appellant/petitioner has placed reliance
on a decision of this Court in *East India Coal Company Limited v. East
Bulliaree/Kendwadih Colliery Co. (P) Limited and Others*, [1987] 2 SCC 124
C and submitted that there has to be apportionment of the compensation.

In our opinion, the said decision has no application in the present case.
East India Coal Company Ltd. (supra) was concerned with the Coking Coal
Mines (Nationalisation) Act, 1972. There were owners who owned the said
mines and there were also raising contractors and selling agents who were
D operating the coking coal mines. That Nationalisation Act contemplated
compensation being paid to the owners. The raising contractors and selling
agents had contended, and this is what this Court was concerned with, as to
whether these raising contractors and selling agents could also be regarded
as owners or not. This Court held that after reading the scheme of the
E Nationalisation Act, the raising contractors would also come within the ambit
of the expression 'owner' in the Act and thereafter it determined as to how
the compensation between two types of owners was to be distributed. That
question does not arise in the present case. As we have already seen, Section
7 of the Acquisition Act requires all types of compensation payable under
sub-sections (1) to (5) being first utilised for discharging the liabilities under
sub-section (6) and thereafter if any amount remains that is to be deposited
F with the prescribed authority for distribution amongst interested persons. The
aforesaid decision in *East India Coal Company's* case has no application in
the present case.

G Therefore, we come to the conclusion that there is no merit in the
appeal as well as in the writ petition and the same are dismissed. However,
parties will bear their own costs.

R.P.

Appeal and Petition dismissed.